GSA's

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NEPA Call-In is GSA's National Environmental Policy Act (NEPA) information clearinghouse and research service.

NEPA Call-In is designed to meet the NEPA compliance needs of GSA's realty professionals.

E-Book Now Available

In January, Colin Wagner, GSA NEPA Liaison, announced that the "Environmental Book" or "E-Book" is now on-line and accessible via the NEPA Call-In web site. The E-Book is a web-based education, training and resource tool designed to help GSA staff understand and comply with the requirements of the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). The E-Book has three chapters: NEPA, NHPA Section 106, and Property Disposal.

The E-Book can be used as a self-directed education tool, guiding users on a step-by-step process through NEPA, NHPA Section 106 compliance, and Property Disposal as it relates to specific GSA actions. The E-Book can also be used as a reference tool by going directly to the list of "Specific Subjects." The E-Book also includes the NEPA "CATEX CheckList." You can find the E-Book on the NEPA Call-In web site at: www.gsa.gov/pbs/pt/call-in/nepa.htm, and click on the button for the "E-Book." For more information, please contact NEPA Call-In at (202) 208-6228.

New Wetlands and Floodplain Desk Guides

The GSA Office of Business Performance has developed draft guidance on wetlands and floodplains, according to Colin Wagner, NEPA Liaison. The effort is aimed at replacing ADM Order 1095.2 "Consideration of flood plains and wetlands in decisionmaking," October 31, 1983, which is considered to be out-of-date and delegates responsibilities to GSA offices that no longer exist.

The draft guidance documents are the "Floodplain Impact Assessment Desk Guide" and the "Wetlands Impact Management Desk Guide." The Floodplain Desk Guide explains the procedures to comply with the requirements of Executive Order 11988, "Floodplain Management," and contains specific guidance for common GSA actions, including coordination with NEPA and applicable Executive Orders (EOs). For certain actions that are expected to impact a floodplain, the Desk Guide requires preparation of a "floodplain impact assessment" to help GSA identify methods to avoid or lessen the impact. The Floodplain Desk Guide is being reviewed by Federal Emergency Management Agency (FEMA) staff.

The Wetlands Desk Guide provides guidance on the procedures to comply with the requirements of EO 11990, "Protection of Wetlands," the Clean Water Act (CWA), and coordination with NEPA and applicable EOs. CWA Section 404 regulations require agencies to obtain a U.S. Army Corps of Engineers (USACE) permit to discharge into a wetland. Although the USACE regulations do not explicitly address construction in wetlands, they define "discharge" to include the placement of pilings. Since any form of construction requires either the placement of pilings or fill, any construction in a wetland is subject to the USACE regulations. State and local governments also have laws and regulations that must be followed. The Wetlands Desk Guide also explains the general requirements on obtaining a USACE permit. The document is currently being reviewed by USACE staff.

Questions on the floodplain or wetlands documents should be directed to Mr. Colin Wagner, GSA NEPA Liaison, 202-501-2888.

In This Issue

Interview With a Practitioner

Name: Javier Marques
Title: Assistant General Counsel
Agency: Advisory Council on Historic Preservation

NEPA Call-In continues its interview series with experts in NEPA and related environmental issues. This interview focuses on the National Historic Preservation Act. In this issue, we were very fortunate to contact Javier Marques, Assistant General Counsel at the Advisory Council on Historic Preservation. Before joining the Advisory Council, Mr. Marques worked for a year as a law clerk for the National Trust for Historic Preservation and two years as an associate for the D.C. law firm of Negroni & Kromer, specializing in real estate financing.

The Advisory Council on Historic Preservation is an independent Federal agency created by the National Historic Preservation Act of 1966 (NHPA), and is the major policy advisor to the Government in the field of historic preservation. The Council is composed of 20 members who are private citizens and experts in the field appointed by the President, along with Federal agency heads and representatives of State, local, and tribal government.

The Advisory Council on Historic Preservation has recently issued revised NHPA Section 106 regulations fostering coordinated NEPA compliance with Section 106 consultation. Have there been any new developments or unforeseen issues arising with the new regulations and integrating NEPA?

At this early stage, there is little of note to say about the NEPA coordination provision of our revised regulations (Section 800.8). Although several agencies have stated their commitment to utilize that provision, the projects at issue have not begun their reviews. We look forward to being closely involved with the first such projects, and provide whatever assistance is needed. After we have a few of these under our belt, we foresee issuing NEPA-Section 106 coordination guidance to assist other agencies. We understand the initial hesitance to use the NEPA coordination provision of our regulations, since it presents a new way of complying with Section 106. However, I believe once a few agencies have tried out this coordination provision, many will soon follow.

It is simply common sense for agencies to attempt closer coordination of NEPA with Section 106. Although scrutiny of effects on historic properties is not as encompassing under NEPA as it is under Section 106, it is advantageous to conduct both reviews at the same time. Off the top of my head, the benefits of this are twofold: you save time and you increase the chances of truly considering the widest range of historic preservation alternatives. Many times Section 106 review is not even initiated until NEPA compliance is well under way. At that point, the agencies realize they must do Section 106 and, in a sense, "reinvent the wheel" regarding their earlier consideration of historic properties. Moreover, at that point, much has been invested in developing and considering project alternatives that may have not benefited from adequate, Section 106 consideration of effects on historic properties. It is much more difficult for the Agency, at such a late stage, to revise these alternatives even if the subsequent Section 106 review process reveals adequate and desirable options. Again, agencies should be mindful that the Section 106 regulations state that they must "ensure that the Section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process of the undertaking."

With the new regulations, the Advisory Council has taken a more focused involvement with the Section 106 process. Do you foresee any or have there been any problems to this role with new actions?

I can't say there have been any problems with this new role. Even though the regulations call for a more detached role of the Council from routine Section 106 reviews, there is always the opportunity for us to become involved whenever it is needed. We have criteria on the revised regulations that guide us to become directly involved in cases where such involvement is more likely to be needed and critical. While we have gradually removed ourselves from the day-to-day review of routine Section 106 cases, we are setting ourselves up for more of a pro-active, long-term assistance role. Many agencies have already contacted us to get help with particular issues of the Section 106 process that have presented persistent problems to their compliance efforts. We are committing ourselves to providing such necessary assistance, and to using the flexible approaches found under Section 800.14 of our regulations to work out long term solutions to agencies. We believe our contributions at this higher level will have a very positive and widespread effect on Federal historic preservation programs.

How has encouraging early consideration by establishing an undertaking and determining whether the activity has the potential to affect historic properties been received within the regulatory sector and how has this changed the Section 106 consultation process?

It is difficult to tell due to the nature of such determinations. As you know, whether something is an undertaking and, if so, whether it is the type of activity that could possibly affect historic properties, are determinations that agencies make unilaterally. These determinations are not submitted to us (unless we specifically request it) or to any other parties for review. Of course, agencies are advised to keep records adequately supporting such decisions in case the determinations are challenged in court. I think this aspect of the revised regulations simply reflects what should be the very first questions an Agency asks itself before embarking on a full Section 106 review.

I would just like to remind agencies to be careful since the definition of "undertaking" is quite broad. Also, I would note that the inquiry as to whether an undertaking is a type of activity that could cause effects on historic properties is a prospective inquiry. That is, the determination does not require knowledge that historic properties are present. The determination is based solely on the proposed activity's inherent ability to affect historic properties.

By combining the "no historic properties" and "no effect" determinations to a single "no historic properties affected," has this helped the Section 106 process?

In revising the Section 106 regulations, great emphasis was placed in streamlining the process. Combining the two steps you mentioned cuts down on the time needed to comply with the Section 106 process. As you know, under the previous regulations, the Agency ended the identification step with a finding of whether there were historic properties in the area of potential effects, and then went on to make a separate formal finding of effect. These two determinations are now simply collapsed into one, and reviewed as a whole. Although I have no statistics on how much time has actually been saved, it is fair to say that reviewing in one step what used to be reviewed as two separate findings must provide some time savings. The specific deadlines on the review of findings and determinations under the revised regulations provide further streamlining of the Section 106 process.

With regards to the changes in the new regulations, what future changes do you anticipate for historic preservation?

I believe that the basic steps of the Section 106 process will not change much in the future. In order to truly take into account the effects caused by undertakings on historic properties, one needs to identify the historic properties that could be affected, assess the nature of such effects on them, and then attempt to find ways to avoid or mitigate such effects.

I believe that the revised regulations provide a great framework for addressing not only current needs, but those that may arise in the future. I specifically refer to the program alternatives set forth under Section 800.14 of the regulations. Through these options, Agencies can truly tailor the Section 106 process to their particular needs and changing circumstances. As I believe I said before, now that the Council is removing itself from the day-to-day review of routine Section 106 cases, it looks forward to invest more of its time in working towards more long-term solutions that work for Agencies, while still being consistent with Section 106.

What do you say to those who view Section 106 as an obstacle in their compliance of a project?

I believe that whatever "obstacles" are presented by Section 106, in terms of time and resources spent, is more than outweighed by the benefits to the country. Prior to the passage of the NHPA there were so many Federal projects that resulted in needless destruction of historic properties. These resources are lost forever, creating a gap in our national conscience and in the cultural landscape where we live that simply cannot be filled. All that Section 106 asks is that the consequences of Federal projects on sites of importance to our history be responsibly considered, and that an effort be made to avoid or mitigate adverse effects to those resources. The participation of the Council, State and Tribal Historic Preservation Officers, consulting parties and the public in general in that process simply strengthens democracy and assures that potentially irreversible actions are only taken based on an informed foundation.

What are the most common mistakes made with NHPA compliance (such as 106 or 110)?

I have to qualify my answer by saying that (1) I only get to see a small sample of all the undertakings where the Council becomes involved, and (2) I only mention mistakes on the Agencies' part since I assume this newsletter is mostly read by Federal employees. Regardless, it appears to me that the most common mistake is that, for whatever reason, the Agencies fail to contact and consult with parties that have a clear interest in the undertaking at issue, and particularly Federally recognized Indian tribes. This may be due to a fear that talking to all such parties will result in protracted consultations. In the case of Indian tribes, it may also be due to lack of experience in identifying the tribes that may have an interest in the undertaking, especially when it occurs outside reservation boundaries. What ends up happening is that agencies are eventually called on such mistakes, and have to end up re-starting the process or revisiting steps they believed were long concluded. It seems that most of the delays happen not because the regulations provide for delays, but because non-compliance with them can only be solved by backing up. I believe that, although the step requiring identification of consulting parties may seem more procedural than substantive, it is a key step that you do not want to get wrong. Sometimes, when you have borderline cases where you are not sure whether to invite a party as a consulting party or not, it may be a good idea to err on the side of caution and provide the invitation.

There are several historic preservation courses offered throughout the United States. Are there any plans for the Advisory Council to offer their own for compliance with the NHPA?

In fact, we have 14 courses already scheduled this year in various cities throughout the country. Please refer to our web page (www.achp.gov/introductory.html) for more information. I recommend you do this as soon as possible since registration is filling up quite quickly in many of these courses. The courses are quite comprehensive, and are taught by Council staff with co-sponsorship by the University of Nevada - Reno.

Last year, right after we published our regulations, we conducted several transitional courses across the nation. Those courses were targeted specifically to those with extensive experience with the Section 106 process, and

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dealt exclusively with the changes brought forth by the revised regulations and how to make the necessary transition. The courses for this year, however, are more in-depth and are tailored for those who have little or no Section 106 experience.

Finally, let me note that there is a lot of information on our revised regulations to be found on our web page (www.achp.gov). I encourage staff to visit our site often for our latest guidance on the revised regulations.

What do you believe to be the most important accomplishments of the NHPA?

I believe that the most important accomplishments of the NHPA can be seen in the hundreds of MOAs signed as a result of the Section 106 process. Projects that before NHPA would have destroyed important historic resources without so much as a blink, are now studied closely, and subjected to public scrutiny and a process that many times results in solutions (MOAs) that address the needs of the project while conserving irreplaceable historic resources. Further, the input from States, tribes, applicants and the public into the decision making process that may affect properties that are truly the patrimony of the entire nation, strengthens democratic ideals and puts all of us more in touch with the people we serve.

Are there any other issues you would like to address to practitioners?

Just a quick comment. A lot of concern expressed by Federal agencies regarding the revised regulations surrounded the role of Indian tribes in the process. Although consulting with Indian tribes was made mandatory by the 1992 amendments to the NHPA, many Federal agencies had not faced the reality of how to conduct such consultation until the revised regulations added some details as to how it is supposed to take place. The "newness" of these requirements should not be viewed as an overwhelming obstacle. There are many sources that can be of use to agencies in this matter, beginning with Indian tribes themselves. There are other helpful sources on the Internet for information on tribes and tribal contacts, such as: the NPS Tribal Preservation Program (www2.cr.nps.gov/tribal/index.html), the NPS Archeology and Ethnography Program (www.cr.nps.gov/aad/nacd), and the Bureau of Indian Affairs (http://www.doi.gov/bureau-indian-affairs.html). Finally, the Council has a Native American Program Coordinator that can answer some questions and point agencies in the right direction regarding tribal consultation.

Final NEPA Desk Guide Available

NEPA Call-In has mailed copies of the "final" PBS NEPA Desk Guide, dated October 1999, to GSA Regional Environmental Quality Advisors (REQA). The NEPA Desk Guide was adopted as GSA's official guidance for NEPA compliance when Administrator David Barram signed ADM Order 1095.4F, "Environmental Considerations in Decisionmaking" on October 19, 1999. The PBS NEPA Desk Guide replaces the outdated ADM Order 1095.4.E and PBS Order 1095.4B, "PBS Preparation of Environmental Assessments and Environmental Impact Statements," July 24, 1985, which should no longer be used.

The PBS NEPA Desk Guide has been well received by the President's Council on Environmental Quality (CEQ). In approving the new guidance, they stated that: "The GSA regulations are complete, concise and... are extraordinary in many respects. They are highly readable and all the information a user needs can be easily found in the easily accessible format. All the reviewers at CEQ gave the regulations high praise and suggested that they be made available to other agencies. The GSA can be justly proud of the NEPA Desk Guide...."

The PBS NEPA Desk Guide will be periodically reviewed and updated to reflect GSA "best practices." Therefore, it is particularly important that the most recent guidance be consulted. A registration form has been included with each copy of the Desk Guide. If you have not returned the registration form, please do so at once to ensure your guidance document is kept current. If you have not yet received a copy of the Desk Guide, you should first check with your REQA to obtain a copy. A list of REQAs can be found on the NEPA Call-In web site at www.gsa.gov/pbs/pt/call-in/nepa.htm. Copies are also available by calling NEPA Call-In at 202 208-6228.

The American Heritage Rivers Initiative

On September 9, 1999, GSA and other Federal Agency Partners signed a joint statement of recommitment to the American Heritage Rivers Initiative. The initiative was established by Executive Order 13061, "Federal Support of Community Efforts Along American Heritage Rivers", September 11, 1997. The Initiative's three main objectives are economic revitalization, natural resource and environmental protection, and historic and cultural preservation. The initiative is also consistent with the existing requirements spelled-out by Congress in the National Environmental Policy Act (NEPA) of 1969. For example, NEPA instructs federal agencies to seek to create and maintain conditions under which man and nature can exist in productive harmony, while preserving important historic, cultural, and natural aspects of our national heritage.

The federal government supports the initiative in two ways. First, it offers federal agency services to organizations and governments conducting community-based work. It also creates a national information and communications network to encourage communities to provide useful information to communities, including sharing success stories.

The communities surrounding designated rivers receive many different benefits, including special recognition; focused support from existing federal programs; a "River Navigator" to serve as a liaison between the community and the federal government; improved delivery of assistance from agencies throughout the federal government and a good neighbor policy.

Interesting Technical Inquiries (TIs)

TI-0606—Integrity of the site selection process while conducting NEPA studies

NEPA Call-In received a request for guidance on the application of the National Environmental Policy Act (NEPA) to the site selection process for a proposed leased construction action. The caller was considering various offers for a proposed site which may have potential historic resource issues requiring compliance with Section 106 of the National Historic Preservation Act (NHPA). The caller specifically requested guidance on how to conduct NEPA analysis and the Section 106 process while maintaining procurement integrity on a proposed leased construction with three possible sites.

NEPA Call-In first reviewed GSA NEPA guidance contained in the PBS NEPA Desk Guide, Final Guidance, September 1999, in order to determine the appropriate level of NEPA analysis required for the proposed action. We reviewed Chapter 5, "Categorical Exclusions," Section 5.4, "Checklist CATEXs." The proposed action appeared to qualify as Checklist Categorical Exclusion (CATEX) 5.4(b). CATEX 5.4(b) applies to acquisition of space by Federal construction or lease construction, or expansion or improvement of an existing facility where all of the following conditions are met: 1) the structure and proposed use are substantially in compliance with local planning and zoning and any applicable State or Federal requirements; 2) the proposed use will not substantially increase the number of motor vehicles at the facility; 3) the site and the scale of construction are consistent with those of existing adjacent or nearby buildings; and 4) there is no evidence of community controversy or other environmental issues.

Checklist CATEX actions require preparation of a checklist to ensure that no extraordinary circumstances exist that would require preparation of an EA or EIS. The checklist is designed to help search for and consider extraordinary circumstances surrounding a particular proposed action. For example, of the sites being considered, one might be adjacent to an already congested intersection, have historic resource issues, or be located within a 100-year floodplain. Upon completing the checklist for each proposed site, one can compare any environmental issues or extraordinary circumstances surrounding the sites as a part of the decision making process, eliminating sites where there is more potential for environmental impacts.

The caller also stated that they were concerned that all proposed sites have the potential for historic resource issues, that Section 106 or other investigative processes could compromise the integrity of the site selection process by inadvertently disclosing GSA's preferred alternative, and wanted to know how other GSA regions handle this issue.

NEPA Call-In contacted the GSA NEPA Liaison, and a Regional Environmental Quality Advisor (REQA), who stated that since Checklist CATEX actions do not require public participation or scoping, it is unlikely that completing a CATEX checklist for each site would disclose information about GSA's preferred site.

Therefore, NEPA Call-In suggests using the CATEX checklist as an initial screen of the environmental issues surrounding each site, and eliminating sites with greater potential for impacts. In completing the CATEX checklist, one may wish to concentrate on historic issues surrounding each site. This may mean initiating the Section 106 process for each site. It should be noted, however, that it is not necessary to complete Section 106 prior to selecting a site. Once it has been determined that selecting a particular site is a CATEX under NEPA by completing the checklist, the NEPA obligation has been satisfied and one can proceed with selecting a site. If historic resource issues are associated with your chosen site, you could then continue the Section 106 process or pursue other intrusive studies without jeopardizing the site selection process.

We then contacted a REQA experienced in this issue. The REQA advised NEPA Call-In that, in past experience, the Section 106 process should begin immediately for all three properties, which involves contacting the State Historic Preservation Officer (SHPO). It was further explained that the past use of the sites should be determined by performing title searches, reviewing "Sanborn" maps, or other site searches to identify any potential historical, archeological or other environmental issues. The REQA further stated that the site could then be selected based upon the findings. If all three sites appear to have the potential for historical or archeological impacts, then further testing may be necessary. In order to maintain procurement integrity, The REQA suggested making the finalization of the contract contingent on the findings of the tests or outcome of the Section 106 process.

NEPA Call-In also contacted a second REQA for additional guidance on the inquiry. This Advisor suggested writing a letter describing the situation to the SHPO and providing them with site maps and other information about the proposed action. The SHPO could provide GSA with information they have regarding potential impacts on the proposed sites. After the preferred site is selected, an agreement with the landowner could be made that the contract is contingent upon testing for archeological, historic, or other impacts.

TI-0630—Guidance on including scoping comments in EAs and EISs

NEPA Call-In recently received a request for information on regulations and/or GSA guidance on how to include scoping comments in Environmental Assessments (EAs) and Environmental Impact Statements (EISs). Specifically, the caller stated that they were completing an EA and wanted to know if there was any guidance on addressing scoping comments in an EA.

NEPA Call-In first reviewed the Council on Environmental Quality's (CEQ) Memorandum for General Counsels, NEPA Liaisons and Participants in Scoping, April 30, 1981. Part 6 of this document, "What to do with the comments [on EISs]," states that after you have received scoping comments from cooperating agencies and the interested public, you must evaluate them and make judgments about which issues are in fact significant and which ones are not. The decision of what is included in the EIS should be made by the lead agency. Every issue that is raised as a priority matter during scoping should

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Interesting TIs (con'd)

be addressed in some manner in the EIS, either by in-depth analysis, or at least a short explanation showing that the issue was examined. Although not a requirement, one may wish to address EA scoping comments in a similar manner.

The CEQ document also states that when scoping has been conducted by written comments, and there has been no face-to-face contact, a post-scoping document is the only assurance to the participants that they were heard and understood until the draft EIS comes out. The post scoping document could be as brief as a list of impacts and alternatives selected for analysis, the scope of work produced by the lead and cooperating agencies for their own EIS work or for the contractor; or it may be a special document that describes all the issues and explains why they were selected. The CEQ scoping document did not provide information on whether or not to attach scoping comments to EAs. However, it would be appropriate to address scoping comments for an EA in a manner similar to an EIS, especially if it appears unlikely that an EIS will eventually be completed for the proposed action.

We also reviewed the CEQ regulations for implementing NEPA contained in Title 40 Code of Federal Regulations (CFR) Parts 1500-1508. 40 CFR 1503.4 (b) "Commenting - Response to Comments," states that all substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement. Although this part does not specifically deal with scoping comments, it does provide guidance on handling comments otherwise received on draft EISs.

NEPA Call-In then reviewed the CEQ's document, "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations," for additional guidance related to EA scoping comments. Although the 40 questions do not specifically address scoping comments received for EAs, Question 29 does provide guidance on how to treat comments received on draft NEPA documents. We reviewed Question 29, "Responses to Comments", which states that responses to comments on EISs should result in changes in the text of the EIS, not simply a separate answer at the back of the document. The agency must also state what its response was, and if the agency decides that no substantive response to a comment is necessary, it must explain briefly why. The answer to Question 29 further states that if a number of comments are identical or very similar, agencies may group the comments and prepare a single answer for each group. Comments may be summarized if they are particularly voluminous. The comments or summaries must be attached to the EIS regardless of whether the agency believes they merit individual discussion in the body of the final EIS.

NEPA Call-In then reviewed the PBS NEPA Desk Guide, Final Guidance, October 1999 for guidance on comments received during the EA scoping process. Chapter 4, "Scoping/Public Involvement," Section 4.1.5.3 "Documenting the Results of Scoping," states that the written results of scoping depend on the level at which scoping is done. The documentation of scoping for an EA or EIS is typically the scope of work for the analysis to be performed, or a scoping document that serves as the basis for developing that scope of work.

We also reviewed NEPA Call-In Fact Sheet, "Public Participation Under NEPA." The fact sheet states that regulations require that all substantive comments (or summaries) be attached to the final EIS. The fact sheet restates that agencies are required to attach substantive comments that did not merit individual discussion in the text. However, the fact sheet did not provide specific guidance on how to treat scoping comments received for an EA.

NEPA Call-In also searched the International Association for Impact Assessment (IAIA), the EPA and the Department of Energy (DOE) web sites, and did not locate any information pertaining to the inquiry.

We then contacted the GSA, NEPA Liaison, for information on including scoping comments with EAs. The NEPA Liaison stated that there is no requirement for addressing or attaching scoping comments to EAs in the CEQ regulations. However, it would be appropriate, since public scoping has been completed, to address the comments in the EA by acknowledging their receipt and by including them in the administrative record.

NEPA Call-In then contacted a U.S. Environmental Protection Agency representative responsible for reviewing agency NEPA documents in regards to the inquiry. They stated that EPA scoping comments for an EA would become part of the Administrative Record, as opposed to being attached to the EA.

We also reviewed the Administrative Procedure Act (APA) as codified in Title 5 United States Code (USC) Section 552 (5 U.S.C. §551) on Cornell University's law library on the world wide web to research whether it contains specific guidance on administrative records as they pertain to NEPA. The APA generally establishes the requirements for agencies to make public its agency rules, opinions, orders, records, and procedures, but does not specifically address administrative records as they pertain to NEPA.

NEPA Call-In then searched GSA's Intranet web site "Insite" for any additional information or GSA guidance on the APA as it applies to the inquiry. We found one reference to the APA as it pertains to the issuance of rules, and did not locate any information regarding administrative records and NEPA.

NEPA Call-In also contacted the Department of Energy, Office of Policy and Assistance, for information regarding the inquiry. The OPA stated that it is up to the different programs to decide what they want to do with scoping comments for an EA. They also stated that they can be addressed in the EA or attached to the EA.

TI-0634 — Time requirement between publishing an NOI and holding a public meeting

NEPA Call-In recently received a request for guidance on the public scoping process following a Notice of Intent (NOI) to prepare an environmental impact statement (EIS). Specifically, the caller wanted to know if there is a minimum amount of time required between publication of the NOI and when public scoping meetings for the EIS process could be held.

Interesting TIs (con'd)

NEPA Call-In first reviewed the CEQ regulations for implementing NEPA contained in Title 40 Code of Federal Regulations (CFR) Parts 1500-1508. Part 1506.6, "Public involvement" states that agencies shall make diligent efforts to involve the public in preparing and implementing their NEPA procedures. Part 1506.6 further states that agencies shall provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected. Part 1506.6 provides additional guidance and regulations for public involvement, including suggestions on where and how to provide adequate public notice. Part 1506.6 of the NEPA regulations does not, however, provide any minimum time requirements between publishing NOIs or notices for public scoping meetings, and when the public scoping meetings are held.

We also reviewed Title 40 CFR 1508.22, "Notice of intent," which states that the NOI should "Describe the agency's proposed scoping process including whether, when, and where any scoping meetings will be held." Therefore, one should consider the NOI as initiating the public scoping process.

We then reviewed the PBS NEPA Desk Guide, October 1999, for additional guidance related to the inquiry. First, we reviewed Chapter 4, "Scoping and Planning for Public Involvement," which provides guidance on how to accomplish public scoping requirements, but does not proscribe a minimum amount of time between publishing the NOI and when public scoping meetings are held.

NEPA Call-In then reviewed Chapter 7, "Environmental Impact Statement," for additional guidance on the inquiry. Section 7.8, "Notice of Intent," states that the NOI kicks off the public scoping process for an EIS, but does not provide any minimum time requirements between publishing the NOI and holding public scoping meetings. This section of the desk guide provides guidance on the minimum content requirements of an NOI (including the requirements of 40 CFR 1508.22):

- Describe the proposed action and possible alternatives;
- Describe the proposed scoping process including whether, when, and where any scoping meetings will be held;
- State the name and address of a person within GSA who can answer questions about the proposed action and the EIS; and
- Include a description of any significant environmental issues that you have already identified through internal scoping, and a specific schedule for EIS preparation, if developed.

Following the guidance provided above on preparing NOIs, the NOI should be written and published so that it effectively announces GSA's intent to initiate the EIS process for a proposed action and announce the dates, times, and places of upcoming scoping and other public involvement meetings or activities.

Section 7.10 of the NEPA Desk Guide, "Public Involvement," further states that public involvement should be viewed as an ongoing activity throughout the process of environmental analysis, and during EIS preparation and revision. Therefore, public involvement is essentially never complete for GSA NEPA analysis activities.

We then reviewed Appendix 2, "NEPA Time Frames," which states that when GSA publishes notices of public hearings or meetings, there is a time period of usually 15 or more days from notification of the meeting to holding the meeting; often longer depending on the scope of the project. Although there is no regulatory requirement for the 15-day waiting period, the NEPA Desk Guide recommends this amount of time so as to provide the public and other interested parties adequate notice to prepare for and attend NEPA-related hearings, public scoping meetings, and other public involvement activities.

NEPA Call-In also reviewed information about the scoping process on the CEQ's NEPANet internet site located at http://ceq.eh.doe.gov/nepa/nepanet.htm. Specifically, we reviewed the document, "Memorandum for General Counsels, NEPA Liaisons, and Participants in Scoping," April 30, 1981. This document contains detailed CEQ guidance for the NEPA scoping and public involvement processes, but does not provide any time requirements for publishing notices of public meetings and when the meetings are held. On the subject of public scoping requirements in general, the document states:

"Because the concept of open scoping was new, the Council decided to encourage agencies' innovation without unduly restrictive guidance. Thus, the regulations relating to scoping are very simple. They state that there shall be an early and open process for determining the scope of issues to be addressed which shall be termed 'scoping,' but they lay down few specific requirements. They require an open process with public notice; identification of significant and insignificant issues; allocation of EIS preparation assignments; identification of related analysis requirements in order to avoid duplication of work; and the planning of a schedule for EIS preparation that meshes with the agency's decisionmaking schedule. The regulations encourage, but do not require, setting time and page limits for the EIS, and holding scoping meetings. Aside from these general outlines, the regulations left the agencies on their own. The Council did not believe, and still does not, that it is necessary or appropriate to dictate the specific manner in which over 100 Federal agencies should deal with the public."

We also reviewed CEQ's guidance document, "Forty Most Frequently Asked Questions Concerning CEQ's National Environmental Policy Act Regulations," but did not locate any information specific to the inquiry.

Therefore, it appears there is no specific time requirement (minimum number of days) between the time GSA publishes a notification that a public scoping meeting will be held and the date the meeting is held. The regulations stipulate that GSA must provide public notice of NEPA-related public meetings "so as to inform those persons and agencies who may be interested or affected," but leaves the notification method to the discretion of the Federal agencies. The PBS NEPA Desk Guide suggests allowing at least 15 days between the notice of public meeting and the date the meeting is held for GSA proposed actions. In addition, you may wish to consider additional methods of public notification, such as mailing informal invitation letters to local elected officials, local community or civic groups, neighborhood associations, and local environmental and low-income or minority groups. NEPA Call-In enclosed a copy of "People of Color Groups," Environmental Justice Resource Center, 1994-1995 directory. The directory may be useful in identifying environmental, low-income, or minority groups which may potentially be interested in or affected by the proposed action.

Continued on Next Page

Interesting TIs (con'd)

TI-0660 – Model MOA

NEPA Call-In received an inquiry regarding the need for a Memorandum of Agreement (MOA) for a historic site. GSA is proposing to build a replacement facility that may affect a historic custom house. Since the proposed facility must be very near a specific highway, there is only one location to build the facility. GSA is considering leasing the historic customs house. The owner could then rehabilitate the building and possibly receive Federal rehabilitation tax credits. If GSA could lease the historic customs house, the size of the new facility could be reduced. The State Historic Preservation Officer (SHPO) states that the size of the proposed facility will result in an adverse effect under the National Historic Preservation Act (NHPA). GSA could mitigate this by using the former custom house building. If this can't be done, GSA will have to seek alternatives that will mitigate the adverse effect of the undertaking (the new facility). The SHPO's main concern is the size of the new construction. Specifically, the caller wanted to know if there were any mitigative measures that the SHPO and GSA have not considered.

NEPA Call-In reviewed the caller's correspondence and conferred with State and Federal agency representatives in the area. The representatives concurred that the proposed undertaking may visually, economically and socially impact a property that is eligible for listing on the National Register, and that GSA's proposed design for a new facility has the potential to adversely effect the historic property (the former custom house).

Minimizing the adverse visual effect on the historic property could be done in a number of ways. One is the siting, orientation, and landscaping of the new facility. Second is the choice of materials, fenestration patterns, roof shape and materials and other details that could reduce the massing and scale of the building to be more compatible with the historic custom house. The design should be done in accordance with the appropriate guidance in the Secretary of the Interior's Standards for Treatment of Historic Properties (36 CFR 68) (also see www2.cr.nps.gov/tps/secstan1.htm), as they relate to adjacent properties and new construction.

Mitigation of the adverse effect by the use of historically appropriate design and material enhances the facility and the area, and could foster further historic preservation programs. For example, a history of the area, including road and rail networks, particularly as illustrated by historic maps and 20th century aerial photographs could make a book or brochure and a contribution to the area's architectural history. From such research, GSA could spin off brochures for users of the facilities and international travelers, exhibits, information for Montana history (K-12) classes, and other materials. The project could be an important part of the documentation for the historic context necessary for determining eligibility of similar facilities. Other enhancements could include landscaping and treatment of the facility or neighborhood.

Avoiding the adverse effect appears to be an alternative that some representatives in the area believe to be viable. Some representatives have asked if the new facility could be located across the road. Whether locating the facility at that location or at some other site, such an alternative should involve consultation with both the town and with interested historic preservation and civic organizations.

Reducing the adverse effect by using the historic custom house appears to be under consideration. If an appropriate lease agreement could be negotiated with the current owner, then GSA could move some of the functions out of the proposed new building and thereby reduce the size of the new construction; this should make it more compatible with the historic custom house. Based on the information provided to NEPA Call-In, it appears that while this mitigation might be the best, it could take extensive negotiations by GSA with the owner of the historic property and an extensive redesign of the proposed new facility to achieve it.

A phased MOA could be followed. Title 36 CFR 800.4(b)(2) and 800.5(a)(3) state that phased mitigation of adverse effects can be built into an MOA and would allow the agency to spread its costs over a period of years, but GSA must be sure to stipulate how it will handle compliance in the event one or more phases can not be achieved. Attorneys on the project could then decide whether a lease or a purchase of the historic property would best accomplish this. Also, if phasing was built into a rehabilitation and restoration plan in an MOA, the SHPO may be willing to sign.

Relocating the historic property is also an alternative, but according to 36 CFR 800.5(a)(2), moving a historic property is always considered an adverse effect and would require a separate MOA. GSA would have to acquire a new site, transfer it to the owner of the custom house, and then meet the costs of moving the historic structure. There is also the potential that relocation of the property would make it ineligible for the National Register. The cost of this alternative may not make this a prudent decision by GSA, which, after all, has to weigh the public interest in any of Memorandum of Agreement. This is another reason why it is important to be sure that GSA's public participation plan (36 CFR 800.2(d), 36 CFR 800.3(c)) includes representatives from city and county governments, and any organizations, as well as the SHPO and/or Tribal Historic Preservation Officers (THPO). When an MOA is finally agreed to and signed, it becomes a legally binding document on GSA.

NEPA Call-In is designed to meet the NEPA compliance needs of GSA's realty professionals.

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